

No. 6012

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IN THE

**United States Circuit Court of Appeals**

**For the Ninth Circuit**

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YEE SING JONG, on behalf of YEE DONG TUN  
(detained),

*Appellant,*

vs.

JOHN D. NAGLE, Commissioner of Immigra-  
tion, Port of San Francisco, California,

*Appellee.*

**BRIEF FOR APPELLANT.**

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### STATEMENT OF THE CASE.

The case at bar is that of a Chinese boy born October 30, 1917, and 11 years of age therefore at the time of his arrival at the port of San Francisco, knocking at the gates for admission as a citizen of this country.

His grandfather was born and died in this country, and his father was a citizen of the United States, and as such admitted, not alone at the time he brought this boy here with him, but on several previous occasions. He, therefore, if his paternity is established, is a citizen of this country and entitled to be admitted.

He (the child) was examined at great length, his replies show him to be bright and quick of apprehension, and the comments of the Board of Inquiry made August 10, 1928, are as follows:

“The applicant appears to be about the age claimed and is quite intelligent for a boy of his age. His testimony shows that he is familiar with much of the history of his al. father’s family as given in previous cases of members of the family. He made several statements which he later corrected, but I believe this was caused rather by his youth than by any intention to make a deliberate misstatement. No fault is to be found in his demeanor. \* \* \*”

“Only two discrepancies worthy of note have developed” (Tr. pp. 10-11). (These are then mentioned, and they seem to counsel on immaterial points and insignificant, when compared with the boy’s admitted familiarity with his father’s family history; see discussion later in this brief.)

But the case is not decided on this evidence. The reason for the delay is stated to be the receipt of two letters received by the Commissioner prior to the applicant’s arrival, which purport to be the work of the boy’s paternal grandmother.

Up to that point the hearing had been fair and the result would have been a prompt release of the boy, had the matter been submitted,—of that there can hardly be any doubt,—and that should have been done, the case submitted and the boy set free.

What was actually done appears from the record (Tr. p. 12, and later). The existence of these letters



was studiously concealed from all but members of the service, from the boy and his father and from their attorney expressly (Tr. pp. 12, 17). Efforts were made to have the grandmother make the journey from her home village to Hong Kong, but no reason for this was given counsel or the parties. The old lady was ill with rheumatism. The country was infested with bandits. She had appeared before the Immigration Examiners at Angel Island, California, and given her testimony in 1924,—had given evidence entirely in accord with that of the applicant and his father, her son. A friend appeared at Hong Kong and testified that she had four sons, but the existence of the letters was concealed from him. And naturally no result was obtained by such methods. Under the circumstances, as no reason was given for asking that the old lady appear at Hong Kong,—the work of the service was detective work, not open examination of witnesses,—and it was open to them, and their duty, as well as their province,—and practice to send an agent of the service to interview the old lady. The only reason this was not done was the expense to the Government (see Record of Imm. Ser. No. 55669/421; Chi. pp. 49 and 62).

Had any reason been given to justify the demand that the old lady journey to Hong Kong to be examined, counsel and the father of the applicant would have had her there—no matter what the expense or inconvenience or danger to her or them. Had an intimation been given showing that her further exam-

ination had become important, the demand of the service would have been met with prompt compliance. Had applicant's counsel dreamed of the existence of these manufactured and practically anonymous letters, the old lady would at once have gone to Hong Kong and given her testimony. But such method was not followed. The agents of the service were acting as detectives sleuthing,—seeking, not the truth, but seeking to trap the witnesses into some damaging admission.

Finally they resorted to springing a trap on the child under their control; and they deliberately informed him that his grandmother had written them letters contradicting what he had said. That such a thing could be done, or would be permitted in this our enlightened land, under the aegis of this Republic, would be incredible, if the record did not establish it beyond cavil (Tr. pp. 34 and 35).

The youngster had already been examined at great length, and had stood the strain,—had proven himself consistent and truthful, as well as intelligent (see the Summary, Tr. pp. 10-11), in August, 1928.

He had been kept in custody of the service till April 10th, 1929, in entire ignorance of the existence of these letters.

On that day (Tr. p. 34) he was again called. He was asked his father's name. He gave it correctly and emphatically denied that Yee Kay Shuck was his father's name or the party who brought him to this country. The record then reads:

“Information has been furnished to this department that the person who brought you to the United States is named Yee Kay Shuck?”

The answer is promptly given, “No, he is not.”

One or both of the letters then being read to the boy without further comment but as genuine communications from his grandmother, as they apparently are, he was asked:

“Have you any comment to make on the contents of this letter?”

No suspicion of its lack of genuineness is allowed to enter the mind of the boy. He has been reared to revere the slightest wish of his forefathers. The Chinese worship these, and the grandmother is a Tsar in the Chinese home. Imagine his dilemma. He must either treat the letter from his grandmother as untrue, call her a liar,—or he must accept her statements as true and make his statements agree with hers. It was a dastardly thing for the Immigration Service to do, and a most unfair advantage to take of anyone, and to practice so on a mere child convicts the service of a desire to find some ground for the exclusion of the applicant, instead of a sincere desire to elicit the truth.

The natural result followed as a matter of course. The little lad wavered and surrendered to what he must have considered a message from his grandmother, the commander in chief in a Chinese home.

He tries to make his statements after that experience agree with what he believes the old lady has written, and the end sought by the Immigration Ser-

vice is achieved. The boy who has told the truth up to that point and is entitled to be landed, now follows the lead given him by these letters and is involved in a maze of unavoidable discrepancies—and his statements made under such circumstances are naively called by the service and treated as corroboration of the genuineness of these letters and of the statements they contain. We cannot conceive how anyone can say under the circumstances that the boy had a fair trial.

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**SPECIFICATION OF ERRORS.**

1. The District Court erred in holding that the procedure above related was due process of law, and not unfair to the applicant.

2. The District Court erred in holding that the citizenship of the father was seriously questioned.

3. The District Court erred in treating the two alleged discrepancies noted (Tr. p. 11) as warranting the action taken by the Board of Special Inquiry, on October 10th, 1928 (Tr. p. 12).

4. The District Court erred in treating the testimony of the applicant, given under the influence of the misrepresentation by the Immigration Service that the so-called letters of the grandmother were genuine information, as corroboration of the statements in the letters and admissions of their genuineness.

5. The District Court erred in treating the variances in the applicant's testimony, and discrepancies developed after the imposition practiced upon him by

the Immigration Service as casting any doubt upon his paternity or citizenship.

6. The District Court erred in holding that the discrepancies developed in all the testimony given were sufficient to cast any doubt upon the applicant's claim of citizenship, and his right to admission into this country.

7. The District Court erred in deciding that the letters set forth herein, and read and shown to applicant for admission were properly used by the Immigration Service.

8. The District Court erred in deciding that the Immigration Service dealt fairly with the applicant, in concealing the existence of the two letters herein set out, and at the same time asking that Wong Shee appear and testify,—regarding their contents and authenticity.

9. The District Court erred in deciding that the Immigration Service has or had given the applicant a fair hearing.

(1) *The District Court erred in holding that the proceedings above related constituted due process of law.*

On this point alone indeed we believe we are entitled without further discussion to the writ of habeas corpus and the boy to his immediate freedom,—unless the court deem that further examination to clear up the matter be had before the court or the department,—

which of course would be or at least include the production and examination of the grandmother, the best possible witness regarding the paternity of the applicant's father and of the applicant. And she will be produced and submit to examination or her deposition taken if this court deem that necessary or proper.

As to the minor points developed by the later repeated examinations of the boy and the father we submit herewith and print as part of this brief the excellent argument of Mr. O'Donnell of the Washington bar, made before the Department of Labor in the case now at bar. It is very thorough and deserves careful attention, if the court is not satisfied from the foregoing and without further study that the hearing in this case was necessarily unfair and beyond the province of the Immigration Service, by reason of their suppression of the letters and their production in such unconscionable, unfair and oppressive manner.

(2) *The District Court erred in holding that the father's citizenship was not established.*

As to the suggestion that the father's citizenship is in doubt,—the answer is that his whereabouts are well known,—that he has been before the department repeatedly, and his citizenship proven again and again. He was admitted this trip when he brought his son, the applicant.

If anything further were wanted, we have the receipt for the funeral expenses of the grandfather, in the possession of the father,—proven to be genuine,

—and it is hardly presumable or possible that any one but the real son of the deceased would have paid the bill or had possession of the receipted bill.

This bill or voucher is admittedly genuine (see letters in Imm. Rec. 55669/421, pages 80 and 84). The voucher for \$748.40 itself is page 63 same record.

(3) *The District Court erred in treating the two alleged discrepancies noted (Tr. p. 11) to warrant the action of the Board.*

The only two discrepancies existing between the testimony of the applicant and his father concerning the residence of a cousin and the location of the school house are scarcely sufficient to warrant exclusion,—even if unexplained; or to call for discussion. Both statements may be true. Both witnesses may be telling the truth as they remembered the facts or as they saw them. The father may be mistaken as to the place of birth or the residence of Yee Yook Ming, or the boy may have been.

The boy may have, in speaking of the school house, drawn the rows in his mind's eye across the village from side to side instead of from front to back when he answered the questions as to the location of the school house. This would make his statement correct while that of the father would be correct also,—treating the rows of dwellings as running at right angles with them as they arranged themselves in the boy's mind when questioned about this detail.

These alone do not warrant the rejection of the plain and positive testimony of the father as to his

son's paternity,—and the boy's proof of his being a member of the family and familiar with the family history, and other details which show his case and his claim to citizenship bona fide and genuine.

(4) *The District Court erred in treating the testimony of applicant given after the misrepresentation to the applicant of the letters read to him as genuine information communicated by applicant's grandmother as corroboration of such communication.*

The absurdity of the position of the Government appears from the contention that the letters are corroborated by the testimony of the boy. Yet they disregard his testimony that he is a son of Yee Quin Sheck and the grandson of Yee Yin Dock (Tr. p. 16). The claimed corroboration from the department records does not exist. The letters are admittedly written by some one other than the grandmother, and no real connection between them and her is shown. Yet they are treated by the department as material evidence (Tr. p. 16) and mainly on the uncorroborated statements they contain the testimony of sworn witnesses is disregarded. No plainer diversion from reason and logic could well be imagined. And while the service is not bound by technical rules of law and laws of evidence, it is bound by reason and logic—by *common sense*.

*Lew Sun Soon v. Tillinghast*, 27 Fed. 2d, 775;  
*Mason v. Tillinghast*, 27 Fed. 2d, 580.



As said in *Johnson v. Damon*, 16 Fed. 2d, 65:

“The mind revolts against such methods of dealing with vital human rights.”

And the treatment of the boy with reference to these letters comes within the clause of the opinion of Justice Brandeis in

*Tisi v. Tod*, 264 U. S. 131.

“The error of an administrative tribunal may of course be so flagrant as to convince a court that the hearing had was not a fair one.”

See, also,

*Re Osterloh*, 34 Fed. 2d, p. 223.

- (5) *The District Court erred in treating the variances in the applicant's testimony given after the imposition practiced upon him by the Immigration Service as casting any doubt upon his paternity or citizenship.*

The effect on the boy may be imagined from the effect of the production of these letters on the father (see Imm. Rec. 55669, Test. p. 84, where the inspector says that the father at once denied the authenticity of these as letters from his mother, but broke into a profuse perspiration so great was his surprise and we may add naturally his indignation at such underhand attempts to discredit his testimony and that of his son, the applicant, and of his mother by his enemies). For he gives a reason for these letters and rightly places their source as the village where one of them is dated (N. B.), where his enemies, certain bandits who had kidnapped one of his children, resided. One of

these had been executed for the crime, and the villagers there had been compelled to pay back some of the ransom they had extorted from him or his family (see note to brief of counsel, Tr. p. 9, Ex. A).

(6) *The District Court erred in holding that the discrepancies developed were sufficient to cast doubt upon applicant's claim and proof of citizenship.*

Exhibit A (Tr. p. 9) is attached to brief of Mr. O'Donnell to which we have heretofore referred, which we print herein *in extenso*. A copy of this brief is attached to the original petition in this case, and the petition itself refers to it and makes it part and parcel of our petition for the writ herein (see Tr. p. 7). So that it is entitled to be considered part of the record in the case, and treated accordingly. We did not print it in the transcript,—omitting it as more properly belonging in the briefs of counsel,—its contents consisting mainly of matter of argument. It discusses every alleged discrepancy in the case and the argument seems unanswerable.

The brief is as follows:

“July 3, 9

YEE DONG TUN, applicant for admission at the port of San Francisco as the son of Yee Quing Shek, a citizen.

55669/5421

Roger O'Donnell, attorney for the above-mentioned appellant, appears in his behalf and submits, in support of his appeal, the following brief, argument and motion, viz:

**THE FACTS.**

The appellant, ten years of age, American reckoning, claims citizenship, in accordance with the terms of Section 1993 Revised Statutes, on the ground that his father, Yee Quing Sheck, is a citizen of the United States by right of birth.

Yee Quing Sheck, putative father of the appellant, was born in China in 1891, but he was admitted at San Francisco in 1912 as the son of Yee Sin Jung, a court record native. In September, 1916, he applied for and received a United States passport, this after the Department had conceded his citizenship (Bu. No. 54180/304); and upon his return in 1918 he was re-admitted as a citizen. He made another trip to China in 1921-1922; and he departed again on November 13, 1926, returning with the applicant on July 11, 1928.

The board has denied admission to the applicant for the stated reason that it does not believe that the evidence satisfactorily establishes that Yee Quing Sheck is a citizen, or that the applicant is his son. While a thorough analysis of all of the facts of importance to the issues involved will result in a brief tending to belie its name, I feel that such an analysis should be made; and in the following paragraphs will attempt to record and discuss in full the facts and circumstances surrounding the case which have an

important bearing upon the supposed reasons for the applicant's rejection.

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ARGUMENT.

Prior to the arrival at San Francisco of the applicant and his father on July 11, 1928, there were received by the Commissioner at the port two letters, one written in English (dated at "Kwong Tung Toy Sien, China"), and the other written in Chinese (supposedly from the Kew How Village, Sun Ning District, China, the applicant's birthplace), both purporting to have been written by Mrs. Yee Ying Duck, or Wong Shee, mother of Yee Quing Sheck and paternal grandmother of the applicant. The letter written in English states that "Yee Kee Sak" is not the son of the writer, and that the "small kid" he was bringing with him to the United States is not his son, but the son of one Yee Kwong Ung. The second letter, written in Chinese, is lengthy, and it purports to show that the writer is the widow of Yee Ying Duck, whose remains were supposedly taken to China by Yee Quon Jung, that the writer has given birth to only two sons, neither of whom was "Yee Kay Shuck", that the latter never had any sons, but had three daughters, none of whom lived, that the boy "Yee Chong Chon" whom Kay Shuck was bringing to the United States is not his son, but the son of Yee Kwong Nin, and that the writer's two sons (Yee Yen Soon and Yee Yen Poy) are both dead, having

died in China in C. R. 5 and C. R. 7, respectively. In short, the above letters were obviously and openly intended to prevent the readmission to the United States of Yee Quing Sheck, and to effect the exclusion of the applicant, his son, in so far as it was within the power of the writer of the letters to bring it about.

After the names of the applicant and his father had been placed upon the "lookout list" at the port, the letters in question were sent by the Commissioner to the American Consul-General at Hongkong, for the purpose of investigation there. The latter officer wrote to Mrs. Yee Ying Duck in Kee How Village requesting that she come to Hongkong and appear before him, in response to which a reply was received, ostensibly written, or dictated, by Mrs. Yee Ying Duck, stating that she would be unable to proceed to Hongkong because she was suffering from rheumatism; but she gave the name of a Chinese in Hongkong whom she stated was a friend of her husband who could give the Consul such information as he needed; and this person, "U. Fat", reported to the Consul on October 23, 1928, and stated, in response to questioning, that Mrs. Yee Ying Duck had *four sons*, but appeared to be unwilling to testify in detail.

The applicant and his father were examined at San Francisco on August 10, 1928; and at the conclusion of the examination the board chairman noted the fact of the receipt of the letters, and held the case open awaiting the investigation at Hongkong. Five months elapsed, during which time Yee Quing Sheck proceeded to Pittsburg, Pa., at the conclusion of which

demand was made upon him, through the attorney of record at the port, that he have his mother appear at Hongkong to testify. At that time, the Commissioner at San Francisco had *not* acquainted either Yee Quing Sheck, the applicant, or the attorney, of the receipt of the letters in question, or of the attempted investigation by the Consul; and as a result the request was refused, it being obviously unreasonable to require that this lady, now about *sixty-four* years of age, and, in addition a *bound-foot* woman, to make the long journey from the interior to Hongkong, this through a country infested with bandits and revolutionists, a trip fraught with danger (and one involving considerable expense) even for an able-bodied man. However, the Government was explicitly informed that she was perfectly willing to testify if an officer was sent to her home to take her statement, this being likewise inferred by her own letter to the Consul. Note that in letter of November 13, 1928, the Consul-General stated that the Kew How Village is at "some distance" from either Canton or Hongkong, and it seems that regulations forbid the incurrence of any expenses in connection with such an investigation. Nevertheless, despite the fact that Wong Shee was herself an applicant for admission in 1924, and testified on two occasions at San Francisco in her own behalf, I am advised that Yee Quing Sheck would have made every effort to have her brought to Hongkong to testify had he been advised as to why her testimony was sought, and had he been told that

she had supposedly written two letters attempting to destroy his political status, as well as that of his son.

On April 10, 1929, nine months after his arrival at San Francisco, the applicant was reexamined by the board, and was asked to read the letters supposedly written by his own grandmother, as a result of which he made several statements which the board considers corroborative of the allegations in the letters mentioned. These matters I will discuss, as follows:

(1) *Names of applicant's father:* Applicant's father gave his names as Yee Quing Sheck and Yee Kwong Look, stating that he had no other names. On August 10, 1928, and again on August 13, *he* (the applicant) gave his father's names in agreement with the foregoing, and said he had "no other names". On April 10, 1929, he repeated this statement and specifically said that he did not know anyone by the name of Yee Kay Shuck. After being told to read the letter referred to, applicant insisted that he is Kay Shuck's son, that Kay Shuck is his father's name, that his father is the "*man that brought me here*", that he "forgot" that his father's name was Kay Shuck, and that Yee Quing Sheck is his father's record name. Re-examined at Pittsburg on April 27, the father said that he had never been called by the name of Yee Kay Shuck, and that his children always called him "father", never calling him by name.

The situation here seems to be perfectly clear. We have, as a witness in his own behalf, a little Chinese

lad, now but eleven years old, born and raised in a small village in the interior of China, entirely unsophisticated, who had suffered unknown fears and forebodings as the result of his enforced detention at Angel Island for more than nine months. Knowing that he must avoid any pitfalls set to catch up the slightest error he might make, and eager to establish the American citizenship which is his birthright, it is not surprising that, having been given a letter to read, signed in the name of his own grandmother (the genuineness of which, at his inexperienced age, he would have no reason to doubt), in which letter a name was assigned to his father previously unknown to him, he unsuspectingly and unhesitatingly changed his testimony to conform with the facts (at least he assumed they were facts) supposedly given by his own grandmother. In this instance, the change was not startling, the difference between the names Quing Sheck and Kay Shuck being but a matter of pronunciation. The position in which this little boy found himself should be borne in mind in considering the other discrepancies.

(2) *Children of Yee Quing Sheck*: The father has testified consistently that he has four sons and one deceased daughter, the latter a twin of the applicant who died eight years ago. The applicant first testified that he had three brothers (names and ages correctly given) and one deceased twin sister, who died about eight years ago, that he never heard that his father had three daughters, and that his father had only one deceased daughter. After being shown



the letter, which he unquestionably believed his grandmother had written, he changed his statements in this connection to agree with the statements in the letter, and said that Kay Shuck had three daughters that did not live, that one was older and two younger than himself, that they died "a good while ago", and that he *does not know when they died and can not remember having seen any of them*—a most remarkable circumstance, if true. He again said he could not remember having seen the two alleged younger sisters, but upon further persistent questioning he said he remembers seeing them when he was "*very little*".

Now it will be noted that the applicant, immediately after having been shown the letter, and while agreeing with the supposed statement of his grandmother as to the daughters, still insisted that he had "another brother at home, a younger brother." Later in the examination, asked the name and age of his brother, he gave it as "Yee Ott Choon, seven years old," the same as he had described the third child in the family on his first examination. Still later he denied that he had said he had three brothers, then immediately changed and stated he had made a mistake when he said he had only one brother at home, testifying: "I really have two brothers at home and they are both younger than I." Asked if he was *positive* that he never had more than two brothers, he said: "No, *I have three brothers in all*—I just forgot to mention my little brother."

It is obvious that the applicant, after having read the letter, attempted to change his testimony so as to conform to the statements in the letter, but the later questioning as to his brothers forced him either to tell the truth as he knew it, or to confirm the statements in the letter, and he finally was compelled to give the facts as he knew them, repudiating the supposed statements of his grandmother and reverting to the testimony first given by him in this connection. There is something pathetic in the spectacle of this little boy being forced to disagree either with what he knew to be the true state of affairs, or with a set of facts which he thought his own grandmother had written; and it is not difficult to envisage the confusion and turmoil which existed in his childish mind, aggravated by his knowledge that so long a period of detention could only mean that some difficulty had arisen of a character likely to prevent him from joining his father.

(3) *Paternal grandfather*: The testimony of the applicant and his father that the latter's father was named Yee Ying Duck (Ock), or Yee Sin Jeung, is corroborated by the past testimony of many witnesses, extending back for a period of seventeen years and including the testimony of Yee Ying Duck himself. It is likewise agreed that the applicant's grandfather died in this country in 1926, that the body was returned to China in that year, the testimony of the applicant and his father giving in detail a mind picture of the funeral in the village. After reading the letter, which said that Yee Ying Ock was not the

father of Yee Kay Shuck, the applicant said he did not remember who is the father of Yee Kay Shuck, that he *never heard his name*, and that the person previously named by him as his grandfather was not, in fact, that relative. Why, it might be asked, has the applicant never even *heard* the name of his paternal grandfather if it be true that Yee Sin Jeung was not his grandfather? Obviously because the statements, or instructions, which he thought emanated from his grandmother, simply said that Yee Sin Jeung was not his grandfather, failing to give the name of that relative; hence the applicant, attempting to agree with that statement, was left no alternative but to say that he had never heard his grandfather's name. It is shown that the applicant never saw his grandfather while the latter was living, and this also tends to account for his ready confirmation of what he believed his grandmother had written.

(4) *Paternal grandmother*: The applicant's grandmother is now living in the Kew How Village, the applicant's birthplace, as is corroborated by the correspondence between her and the American Consul at Hongkong; and the applicant's testimony describing her is in consistent agreement with all of the past testimony. The record shows that he *correctly identified a photograph of her* found in the San Francisco file covering her unsuccessful application for admission in 1924; and the applicant also gave the facts respecting her trip to this country. After reading the statement in the letter to the effect that the writer was not the mother of Yee Quing Sheck (and hence

not applicant's grandmother), the applicant changed his testimony and stated that Wong Shee was not his grandmother; but it is a significant coincidence (if such it can be called) that he assigned the name of Wong Shee as that of his paternal grandmother, but said she died *in his village* the "year before last." Of course, this statement is all a part of the applicant's fright and nervousness when confronted with the letter mentioned. As has been indicated, the applicant, later in the examination, must have begun to realize the possibility that the letter was not actually written by his grandmother; and it is a very curious circumstance that, once the child had commenced to retract the apparently damaging statements made under the influence of the letter (specifically, his retraction of the statement concerning his brothers) the board saw fit to entirely shut off any further questioning. Is there any explanation for this action by the board? In my opinion, it is obvious that the boy, upon further questioning, would finally have cleared up the whole situation, and would have retracted the irresponsible statements made had he been definitely advised of the fact that the letter in question may not have been written by his grandmother at all.

This brings us to the question of whether or not the applicant's grandmother did actually write the letters. Note first of all that this woman's 1924 record at San Francisco shows her to be *illiterate*, she having then testified that she was unable to write her name. Of course, one is immediately compelled to ask what

possible motive Wong Shee could have had for making any such statements as those ascribed to her. The letter dated June 7, 1928, pretends to supply the motive, in effect as follows: That one Yee Quan Jung accompanied the remains of Yee Ying Duck back to China on the s/s "President Wilson," the 9th month of C. R. 15; that this person told Wong Shee that the only debt remaining due her deceased husband was the sum of eight hundred dollars, supposed to be the balance of fifteen hundred dollars which Yee Kay Shuck owed to Yee Ying Duck as payment for bringing the former to the United States; and that since Kay Shuck did not pay Wong Shee the money due the letter was written. Obviously, this statement is in the near-ridiculous class, for the reason that Yee Quing Sheek was admitted to the United States *seventeen years ago*; and, surely, if there had been any break in the relations between Wong Shee and Quing Sheek the former would not have testified as she did in 1924, i. e., naming Quing Sheek as her third son, as did also Yee Ying Duck when he testified at that time. Further, it is shown all through the related records that the relationship which existed between Quing Sheek and Yee Ying was real, and not fictitious, for during the entire period between the time of the former's admission and the latter's death, Ying Duck never testified in an immigration proceeding without being able to give the address and occupation of Quing Sheek, his son, and in one or two instances he secured the latter's presence to testify.

Further, the letter is in error on several important points. First of all, the remains of Ying Duck were not taken to China by one Yee Quan Jung, for they were shipped to China on the s/s "President Hayes," leaving San Francisco on November 6, 1926; and it is shown that Quing Sheck was then applying for a return certificate, Form 430, in order that he might return to China immediately to attend to the burial, request having been made of the San Francisco office that the application be acted upon immediately for that reason; and the record shows that Quing Sheck himself was on board the s/s "President Wilson," which left San Francisco on November 13, 1926, one week after the body had been shipped. The testimony of Quing Sheck indicates the manner of shipment of the coffin from Hongkong to the Ick Hoy Market, and from the market to the village, as well as the details of the ceremonies attending the burial. Again, on February 15, last, there was filed with the San Francisco office a receipted undertaker's bill covering the funeral expenses and cost of shipment of the body from Pittsburgh to San Francisco, paid by Quing Sheck, which receipt he had among his effects, although he at first thought it had been destroyed. The report of the examining inspector at Pittsburgh shows that the bill was the subject of an investigation in that city which *completely* verified all of Quing Sheck's claims in this connection.

The real authorship, and motive for authorship, of the letters in question has been indicated by the testi-

mony of Quing Shek on reexamination. He states that when he arrived in China in company with his nephew Yee Yook Hon (son of his brother Quing Soon) in 1926, the boy was captured by bandits and that the family was compelled to pay six thousand dollars ransom to get the boy back; that he made the "Ai Yuen Village people" refund a part of this money, and that by reason of the enmity thus stirred up one or more of the people in that village are undoubtedly responsible for the writing of the "knocking" letters. Board chairman Hanlen disposes of this explanation with the mere comment that it "can be given very little weight."

Let us note, first of all, that the letter dated April 20, 1928, was written from the "*Tai Suen*" Village, unquestionably the same as "*Ai Yuen*" Village. Attached hereto will be found a copy of the "Chinese World" printed in San Francisco on May 24, 1929, on page 6 of which will be found an article (outlined in blue pencil, and translation herewith) reporting the capture of Yee Yook Hon by the bandit named, the fact that the boy had just returned to China from San Francisco, that ten thousand dollars ransom was demanded, that Wong Shee, widow of Yee Ying Ok, *sued* the bandit's brother and *compelled* him to pay a part of this money, that six thousand dollars was finally paid after compromise, that the boy was returned to his home, and that the bandit was later *captured* and *executed*. Note that the first of the letters was written *three days* prior to the *execution* of the bandit (and undoubtedly while the bandit was

incarcerated), the second letter having been written but *seventeen days* after the execution. Although this newspaper article does not contain in full the measures taken by the applicant's father to force the family of the bandit, and the people living in his village, to restore at least a part of the money, it indicates that there was more than sufficient trouble because of the affair to inspire the enemies thus made to secure the precarious sort of revenge which they hoped to accomplish by the letters in question. The applicant's testimony shows that the Ai Yuen Village is only about a sixth of a mile away from his home which, together with the fact that the history of this family would have been brought out in the lawsuit mentioned, accounts for the knowledge of the persons in the Ai Yuen Village involved in the trouble of Quing Sheck's family, his status as a citizen of the United States, and so forth.

This is not the first case coming on appeal to the Department in which an attempt has been made by Chinese persons to enlist the aid of our Government in harassing and disturbing their enemies and, by means of such communications, of paying off old scores and grudges. Such cowardly attacks, while not particularly common, are not at all rare, and it is indeed surprising that any immigration officer of experience would accept such a communication at its face value, and on the basis of it attempt to deny the citizenship of two innocent persons. The fact that Quing Sheck was mentally disturbed when shown the



letters in question is only perfectly natural, as is likewise the fact that the ten year old applicant became so bewildered as to momentarily lose all sense of reason when told to read the letter. The record shows just how much value the officers at San Francisco *really* attached to the letters; for, notwithstanding the fact that they were of record before the time of the applicant's arrival with his father, and the latter's name and file had been put on the "lookout list" by the Inspector-in-charge, Quing Sheck was admitted *immediately* upon his arrival. To hold that Yee Quing Sheck is a citizen for purposes of going from and returning to the United States, and at the same time to hold that he is not a citizen for the purpose of having his child, or children, join him here, is so highly inconsistent as to constitute a denial of any and all justice both to him and to his child. The excellent past record of this man, and of his whole family, might have indicated to the board that caution should have been the first principle in attempting to overturn his status; and Yee Quing Sheck courts the fullest fair and impartial investigation of his American citizenship and of the relationship which the applicant bears to him. Incidentally, the utter failure of the San Francisco authorities to inform Quing Sheck of the reason why they wished to have his mother make the expensive, dangerous and troublesome journey to Hongkong from her home is the only reason why her presence at the Consulate was not secured at any and all cost, this in order that her suspected authorship of the letters in question might

have been conclusively disproven, as it is disproven by other facts of record should be noticed.

Previous to the exhibition of the above mentioned letters to the applicant, only *two* "discrepancies worthy of note" were noted by the board, which will form the subject of the following discussion:

The first is as to the place of residence of Yee Yook Ming, cousin of the applicant, and nine year old son of Yee Quing Poy. The applicant and his father agree that Quing Poy and his family are living in Canton City, just as Wong Shee testified in 1924, the latter's testimony at that time indicating that the family moved from the village so long ago that the applicant would have little, if any, recollection of the members thereof. Quing Shek is reported as stating that one of the boys in the family, Yook Ming, is living in the Kew How Village, whereas the applicant says Yook Ming is not living there, but is and has been living with his mother and father in Canton. Quing Shek admitted that he did not know how long Yook Ming had been in the village; and it is entirely possible that the boy paid a short visit to the village and was seen by Quing Shek but not by the applicant. However, note that the chairman *failed* to ask Quing Shek if he himself *had seen the boy in the village*, and the circumstances of any meeting that may have occurred. Neither did the board confront either the applicant or his father with the testimony of the other. The probability is that Quing Shek was so busy attending to his many interests in China

that he never attempted to keep close track of each of his many nephews.

With the record on the foregoing point in the condition it is, I do not believe the applicant can justly be charged with error. It may be that the boy's testimony on this point was at fault, but the board should have been warned by other irresponsible statements that he made that every opportunity be given to correct such errors or misunderstandings. Note the fact that the applicant at first said he did not know the age of, and had never seen, his cousin Yee Yook Sin, but later, reexamined, asked if he had any idea how old Yook Sin was, he said the latter was about thirteen years old, and still later he said he had seen Yook Sin but meant by his first statement that he probably would not recognize him now, as he moved from the village so long ago. Another example: He was asked the name of the *nearest* village to his own, but said there was no village *near* his. However, in answer to the next question he stated that the Ai Yuen Village is about a *half a li* from his home. Another example: He first said he did not know if the identifying witness had any children, that the witness did not bring anyone to this country with him. Later he was asked if he was sure that the witness had no children, and said he knew only *one* of this man's children, who came on the *same steamer* with the witness and the applicant!

The other "discrepancy" involves the location of the schoolhouse in the village. Referring to the record

covering the original application for admission of Yee Quing Sheck and Yee Quing Soon in 1912, and the record of Yee Yock Sin, an applicant in 1922, it will be noted that the testimony in those cases indicates that there are *two* schoolhouses in this village, one public and one private; and since the chairman only questioned the witnesses herein as to "the" schoolhouse, there is no way whatever of determining to which schoolhouse either the applicant or his father was referring. Further, it is shown that the houses and rows in the village form almost a perfect square, and a slight difference in the method by which the number of a row is figured—that is, a difference as to the relative direction from which each witness started his figuring—would account for such a slight difference as analysis of the testimony will indicate. The applicant places the school he is speaking of in the third row. Note that his grandfather, testifying in 1912, said one of the schoolhouses was "*outside*" of the fourth row—probably enough outside, or out of line with, the fourth row to allow for a child's opinion that it is on the third row. The examination on this point was so deficient that the "discrepancy" thus evolved certainly can not be seized upon as determinative of the question of whether or not the applicant is Quing Sheck's son.

The board chairman thinks an unfavorable feature of the case is Quing Sheck's testimony that his two brothers, Quing Soon and Quing Poy, are now living in Canton City, whereas two letters produced by the

applicant's grandfather in 1924 indicated that the two boys mentioned had been killed while serving in the revolutionary army in China. Of course, the grandfather was not testifying from personal knowledge, and a reference to the letters which he received at that time will show that even the relative who was responsible for the rumor of the death of the boys did not have personal knowledge, merely relying upon newspaper *reports*. It will probably be fresh in the memory of many of us that countless official reports of a similar nature were made concerning the members of our own forces during the Great War, which reports later proved to be entirely false.

Since but two "discrepancies," or apparent discrepancies, are to be found upon close comparison of the original testimony of the principals, it hardly needs be said that the testimony of all concerned was in very excellent agreement. The board specifically admitted that the applicant is familiar with the family history, that errors which he made were due to his tender years, and that "no fault is to be found in his demeanor" while testifying. The chairman likewise conceded that Quing Sheck was "very self-possessed during his examination"; and I take it that the demeanor of the third witness was equally good.

The board members grudgingly admitted that there is a "fairly good resemblance," or a "slight resemblance," between the applicant and his father. In my opinion, based upon a careful photographic comparison of the two, there is a very good resemblance be-

tween them, this being strongly corroborative of the claim that they are related by blood. Comparison of the photograph of Yee Quing Sheck with the old photographs of *his* father will also show an excellent family resemblance between these two.

Returning from China on November 19, 1918, Yee Quing first named and described a boy of the applicant's age, being then but *thirteen months old*. On his every appearance to testify since that time his oldest son has been mentioned; and consistent reference to the boy will be found in the testimony of his grandfather and his cousins in the related records which are exhibited. It is significant that the board chairman admits that the applicant appears to be as old as is claimed.

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#### CONCLUSION.

I think it will be clear from the foregoing, and from the facts of record, that but for the scurrilous and cowardly attack of an anonymous Chinese this applicant would have been allowed to join his father here many months ago. That the board entirely failed in its attempt to obtain some *evidence* to prove its stated belief that the letters discussed above were actually written by the applicant's grandmother is perfectly apparent; and no one taking a fair view of the situation can properly entertain the opinion that the statements of a child of the applicant's years, made in the belief that he was only confirming the statements of his own grandmother, constitute evi-

dence of the genuineness of such letters. On the other side, it is found that *virtually conclusive* corroboration has been offered by Yee Quing Sheck of the correctness of his surmise as to the authorship of the letters, just as it is shown that the board's failure to accord due weight to his testimony in this connection was error. Many reviews of this record have convinced me of the entire genuineness of the case, and of the good faith of Yee Quing Sheck, and I am confident that a like impression will be received by anyone giving to the case a full measure of careful and just consideration.

It is respectfully moved, and urged, that the appeal be *sustained*.

(Signed) ROGER O'DONNELL,  
*Attorney for Yee Dong Tun.*"

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The foregoing brief of Mr. O'Donnell was attached to the original petition for the writ in the District Court,—the statements may therefore be considered to be verified by petitioner,—at any rate the United States Attorney has had and has notice of our claim that these statements of what appears in the record are borne out by the record, though Mr. O'Donnell fails to refer to the particular portions of the record on which he relies.

We shall try, in our reply brief, to give all the references to particular pages and quote the exact words of the record wherever we believe this course will

save the court the labor of hunting through the record for support of Mr. O'Donnell's argument.

However, under the circumstances, it will facilitate that work and lighten the labors of both court and counsel if the U. S. Attorney will kindly take pains to state what, if any, statements made in this brief he challenges as not sustained by the record if any there be, in his opinion. And we respectfully ask him to do this and hope that he will do this, and point out to us any statements made herein in making which counsel for petitioner are mistaken. If he will be good enough to do that, we shall be greatly obliged to him, and will supply the references and quote the words of the testimony or exhibits which we believe sustain our contention,—or confess that we are mistaken.

This request we believe justified under the circumstances, and this course also will, we believe, save not only the court but counsel for both parties unnecessary labor and printing.

7. *The District Court erred in deciding that the letters set forth herein and read to applicant were properly used as evidence by the Immigration Service Boards.*

The letters mentioned by the Boards of Inquiry and Review (Tr. pp. 12, 16 and 23) are as follows: One was in English. But the first one shown to the boy and read to him was in Chinese. A translation of it is in the record and is as follows:



“Kew How Village Hoy San Dist  
 Kwong Tung Province China.  
 “C R 17-4-20

To the Collector of Customs—Sir:

This is to inform you that the writer is Wong Shee whose deceased husband is Yee Ying Ock (or Yee Ying Duck) and his marriage name is Yee Sin Jeung. While living he was in the U. S. seeking riches. In C R 15-1st part of the 9th month he went to Pittsburg Pa. for the purpose of collecting debts, and while in that city he got sick & died there. Fortunately uncle Yee Quon Jeung or Ying Hoy (note) (by translator) (Yee Quong Jeung appears here to be a younger brother of Yee Sin Jeung or Yee Ying Ock H. K. T.) brought my husband's remains to China with him on SS Pres. Wilson, which sailed from S. F. about the 9th month of C R 15th and his corpse in a coffin arrived home on the 1st part of the 11th month. You can verify this by looking up the matter. When uncle Yee Quon Jeung arrived home, I asked him what instructions or messages did he leave at the time of his death—whether he had any accounts that had not been collected and he said ‘Sin Jeung got sick and lingered for several days before he died, so he said all the debts due from different ones had been collected except that from Yee Kay Shuck,—or Yee Gwong Loot. He said when he got Yee Kay Shuck to the U. S. it was agreed that when he got safely landed he was to pay him (Yee Sin Jeung) \$1500.00 gold including steamship transportation and \$200.00 had been paid as a retainer. It was also agreed that in case Yee Kay Shuck should be held up by the Customs Service and sent back to China the money received as a retainer would be returned to him; but fortunately the testimonies agreed and he got safely landed. At the time \$800.00 was collected including the money received in advance so there was still \$700.00 gold due from

him. He said he had demanded the payment of this debt many times but had not been able to collect it so he (Yee Sin Jeung) asked that his wife Wong Shee be informed of it in order that she might demand the payment of this debt from Yee Kay Shuck and use it for her household expenses'— After I heard Qwong Jeung's statement concerning the instructions left by my husband, I went to see Yee Kay Shuck and demanded that he pay me at an early date the \$700.00 he still owed my husband for getting him over to the U. S., but to my surprise Kay Shuck in his conscienceless and ungrateful way, seeing my husband had died said he had paid it all to my husband and that he did not owe him anything. Not only he did not pay me this debt (\$700) but he even used dirty words to me. He said 'your husband was a steerer getting people over to the U. S. under guarantee—falsely claiming me to be his son for the purpose of getting money.' So after carefully thinking over this matter I believe that my husband and he must have agreed (on the price) before his case was brought about; and now he has treated me so shamefully and has shown the kind of conscience he has, so I am writing you this letter especially telling you all about this case, in order that you may have material to pursue a secret investigation of it and secure sufficient proof (to what I have said here). Yee Kay Shuck left his home Village for Hong-kong on the 19th day of this month (C R 17-4-19) to return to the U. S. via S. F. He brought a boy with him the boy's name is Yee Chong Chon or (Yee Sang Chon) who is not the son of Yee Kay Shuck; the boy is Yee Kwong Nin's son of Kew How Village. So Kay Shuck is falsely claiming a son for the purpose of making money.

Yee Kay Shuck lives in my village, so I know positively that he has had three daughters but no son, and all his daughters did not live.

Yee Kay Shuck, marriage name Yee Gwong Loot is not my son. I have given birth to only two sons; my first son's name is Yee Yen Soon (perhaps meant Yee Gwing Soon) (?)—who returned to China from the U. S. in C R 4 (1915) and died in C R 5—6th month; my 2d son's name is Yee Yen Poy (perhaps meant Yee Gwing Poy) (?) who returned to China from the U. S. in C R 5 and died in the 7th year (1918).

Ordinarily I should not have given you the above information but it is on account of Kay Shuck's total lack of conscience causing an enmity between him and me that I am giving you the facts of his case so that you can investigate him.

Respectfully

Mrs. Yee Ying Duck  
or Wong Shee  
or Yee Wong Shee''

(H K Tang translator)''

The original in Chinese is found in Imm. Rec. 27028-3-6 with the English letter. This, the first one shown the boy applicant (Tr. p. 34, Test. of Yee Dong Tun, Imm. Rec. 55669-421, p. 73), is called "INFORMATION" by the chairman of the Board of Inquiry.

Its effect may well be imagined. It was his grandmother speaking in Chinese over her own signature (apparently) to her grandchild and contradicting all he knew concerning his family and all he had said in his testimony regarding it.

Such treatment of aliens should be reprovod instead of being sanctioned or even allowed.

It is far worse than what was done in *Chin Quong Mew v. Tillinghast*, 30 Fed. 2d 698, where *ex parte*

statements merely admitted,—no opportunity being given to refute them, were held to warrant issuance of the writ. Here such statements are given in such a manner as to compel belief by the child to leave no room for refutation or contradiction by him and these statements were not given under the sanction of an oath. They were (even if genuine) mere hearsay,—mere written self-serving declarations of a witness contradicting her sworn testimony given under the influence of revenge and discredited by the very reasons they contain as unworthy of belief because inspired by a desire to injure some one and not by a desire to see the truth prevail.

The proper use to be made of them is or would of course be to call the grandmother to the witness stand and confront her with these and examine her with regard to them. This is the only way they could be used in a court of law and the only proper and right way to use them in any investigation. No other method is fair to the witness; no other method is fair to the applicant. The use made of them was unfair to him.

(8) *The District Court erred in deciding that the Immigration Service dealt fairly with applicant in concealing the existence of the two letters herein set forth and at the same time asking that Wong Shee appear and testify again.*

We take no exception to the fullest investigation possible by the department. We should have been

pleased to have the Immigration Service interview the old lady as they did her friend U. Fat. We do not find fault with the suspicions of the Service which constrained them to conceal the existence of these letters even from the old lady's friend and agent, this same U. Fat, in the hope that he might sustain or strengthen the suspicions of the Service by some damaging admissions (see Report, p. 69 of Rec. 55669-421).

But when the department refuses to send an agent to talk with the old lady—when they insist on her being produced for examination although she had in 1924 appeared and submitted to an examination under oath in California at the department headquarters on Angel Island (see her testimony, pages 4 and 5 of Imm. Rec. No. 669-421—case of Wong Shee) and give no valid reason for her further examination—when they refuse for lack of funds to pursue their investigation and the demand that we produce her seems unreasonable to us—when in the absence of any proof of the genuineness of the letters they practice on a child in the way they did to entrap him into discrepancies—they cease to be fair and the decision based on such methods is entitled to no respect.

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The second letter shown the boy is the one written in English, not from the village where the supposed writer lives and then lived but *from the bandit stronghold*. It reads:

“Kwong Tang Toy Sien, China  
April 20 1928

Emigration office of  
San Francisco Cal.

Dear Sir,—

Mr. Yee Kee Sak is taking a small kid with him to import at San Francisco to U. S. He and his son have leave the village on the 19th. On this case (of) Yee Kee Sak I want to inform it to your officer that Yee Kee Sak really is not my own son and a kid that he brings with him is not his really son that kid I know that is Mr. Yee Kwong Ning's son his name is Yee Chuck Chon So I would be glad to your officers will pay a great more attention to this case. I remain sincerely yours

Mrs. Yee Ying Tak”

This letter was also read to the boy applicant (Test. p. 74) as if it were genuine. The original is in Imm. Rec. 55669-421.

Treating such a communication as a letter from a Chinese grandmother, directly or indirectly sent or inspired, seems ridiculously preposterous,—to the average mind.

The use of the word “kid” stamps it as the work of some evil minded person seeking to deprecate the applicant and his family in absurd fashion, but in every way however small,—particularly as the word son is used in the same communication,—and was available to the writer in describing the boy and the statement that the father and his son had left his village on the 19th, is in itself an admission that the applicant and his father had started on their journey to this country on that date.

The old lady's picture in the record just cited shows her to be entitled to the respect of her descendants. No wonder that this child was confused when in his mind he pictured this stern old lady writing a letter which stated that he is not her grandson. He must have been appalled and indeed when this second letter was read to him he was stricken dumb. He had no comment to make, though upon seeing and hearing the first one he attempted to conform his testimony to what he believed to be his grandmother's statements.

She testifies in that record by the way that she had four sons. That they have all been in the U. S. and the records showing this are among the exhibits in this case. And no one can look at her photo in that record and believe her capable of the petty meanness displayed in the above letters. Chinese women are above such methods. They are left for the bandits who are really responsible for the letters.

There is little to add. We have shown unfairness conclusively. We go further and challenge the Service and the U. S. Attorney to justify the exclusion of this boy on the evidence adduced.

The question of his paternity as one of fact rested with the Department and its decision would be final, if the hearing had been fair. The artifice employed to confuse the boy rendered it a farce as an inquiry and the boy's so-called corroboration of the letters should be discarded by the court. The right to make a decision final in its nature was lost by the Department when it resorted to petty trickery to entrap a

child into making damaging statements at variance with statements he had already made. The duty now of deciding on the boy's paternity and citizenship rests with this court and we assert that, even with all their power and arts the zealous officials of the Immigration Service have not been able to extract testimony or adduce evidence that even tends to show the applicant to be other than what he claims to be, the son and grandson of a citizen of this country. On the contrary the burden of proving those facts has been well sustained by him and he should be set free.

Should there be any lingering doubt in the minds of the court as to this last point, then a hearing before the District Court should be had and the deposition of the boy's grandmother and of his mother, as well also, be taken that the truth may appear and the boy's rights for all time conclusively established.

He has been detained on Angel Island since October, 1928—a year was foolishly, fruitlessly and oppressively wasted by the Immigration Service in underhand efforts to obtain evidence to warrant his exclusion. Had the truth been sought and fair methods employed he would have been free a full year ago.

This ought to entitle him to immediate release and subsequent freedom. But if the court is not fully satisfied that he is a bona fide citizen of these United States, or fears that he has not fully proven this, he will be patient and sustain burden of proof by overwhelming evidence—if he will but be given the opportunity so to do. He will meet any attack upon his



rights claimed here if given his day in court. That he has never had—a fair hearing has never been accorded him. That is all that he seeks.

9. *The District Court erred in deciding that the Immigration Service has given the applicant a fair trial.*

The department in disregarding the evidence given under proper conditions proving paternity and citizenship and practically forcing the applicant to contradict his former testimony and then treating the later statements though made under what was certainly fraudulent practice by the department if not amounting to duress—was arbitrary, unreasonable and unfair.

*Gung Yon v. Nagle*, 34 Fed. 2nd 848;

*Jew Mook ex rel. Jew Wing Lung v. Tillinghast*, 36 Fed. 2nd 39.

*Moy Fong v. Tillinghast*, 33 Fed. 2d 125;

*Chin Gim Sing v. Tillinghast*, 31 Fed. 2d 763;

*Flynn ex rel. Chin King v. Tillinghast*, 32 Fed. 2d 359;

*Wong Tsick Wye v. Nagle*, 33 Fed. 2d 227;

*Tillinghast v. Wong Wing*, 33 Fed. 2d 290;

*Chin Quong Mew v. Tillinghast*, 30 Fed. 2d 684;

*U. S. ex rel. Iorio v. Day*, 34 Fed. 2d 920.

## NOTICE OF MOTION.

The U. S. Attorney is requested to take notice that at the hearing of this case now set for March 24th, 1930, counsel for appellant will ask the court for an order allowing him to file an additional brief,—as the foregoing brief does not contain references to all the records and testimony upon which appellant will rely,—by number and page,—and counsel has been unable in the time allowed to examine as thoroughly as he deems his duty requires the mass of testimony and exhibits on file herein, or to discuss the points called discrepancies as carefully as he believes he should, in order that he may not seem to rely wholly on the one striking instance of unfairness discussed in foregoing brief.

Respectfully submitted,

EDDY K<sub>̄</sub>NAPP,

*Attorney for Appellant.*

Dated February 21, 1930.